No. 85-1695

(2)

In The

Supreme Court of the United States

October Term, 1985

SOCIETE NATIONALE INDUSTRIELLE AEROSPATIALE and SOCIETE DE CONSTRUCTION D'AVIONS DE TOURISM,

Petitioners,

v.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IOWA,

Respondent.

(DENNIS JONES, JOHN AND ROSA GEORGE, Real Parties In Interest)

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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May 16, 1986

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QUESTIONS PRESENTED

1. Does the limited issue presented for review by the Petitioners sufficiently meet the criteria established by Supreme Court Rules 17 and 18 to justify review at this stage of the proceedings?

2. Is it proper to grant review on writ of certiorari where the record below reveals that the case is not ripe for review and where the court cannot render any meaningful relief if it adopts Petitioners' reasoning?

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BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Respondents request that the petition for writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit be denied. This case raises similar issues to *In re Anschuetz & Co., GmbH,* 754 F.2d 602 (5th Cir. 1985), *petition for cert. filed,* 54 U.S.L.W. 3084 (U.S. Aug. 13, 1985) (No. 85-98) and *In re Messerschmitt Bolkow Blohm GmbH,* 757 F.2d 729

(5th Cir. 1985) *cert. granted,* 54 U.S.L.W. 3686 (U.S. April 22, 1986) (No. 85-99). However, Respondents believe that the issues are distinguishable, and that the lower courts have previously decided the same issues herein consistently, so that the petition should be denied and this case allowed to proceed.

OPINIONS BELOW

The opinion of the court of appeals is reported at 754 F.2d 120; the order of the magistrate (Appendix B) is unreported.

STATUTORY AND TREATY PROVISIONS INVOLVED

This case concerns the construction and purpose of the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, *opened for signature,* March 18, 1970, 23 U.S.T. 2555, T.I.A.S. No. 7444 (entered into force between the United States and France on October 6, 1974) ("Hague Evidence Convention") and the interplay between the Hague Evidence Convention, the Federal Rules of Civil Procedure, and French Penal Code Law No. 80-538. The Hague Convention is reproduced as Appendix C. Rules 33, 34 and 36 of the Federal Rules of Civil Procedure are reproduced as Appendix D. French Penal Code Law No. 80-538 ("French Blocking Statute") and an official translation thereof are reproduced as Appendix E. For the purposes of this petition, Rules 17 and 18 of

the Supreme Court of the United States, reproduced at Appendix A, also apply.

STATEMENT

This case presents the narrow issue of whether a United States District Court can order a party over whom it has personal jurisdiction to answer interrogatories and respond to requests for production, even when that party must resort to sources located abroad, where the discovery requests are filed and served in this country and the responses are due in this country. The opposing viewpoint is that the Hague Evidence Convention, and ancillary statutes in the various signatory nations, essentially control the discovery proceedings in American courts when one of the parties happens to be a foreign national.

The Convention governs the "taking of evidence abroad", as the title indicates, and provides a procedure, known as "Letters of Request", whereby the party seeking the evidence may solicit the appropriate authority in another signatory nation "to obtain evidence, or to perform some other judicial act." (Art. I, App. C at 21). The Letter of Request must specify certain facts, including the names and addresses of the persons to be examined, the questions or subject matter for the examination, and the documents or other real or personal property to be inspected. (Art. 3, App. C at 22).

The petitioners in the instant case are French corporations. France is a signator to the Convention. Petitioners' documents and records are purportedly all located in France. France also has a blocking statute, which by its terms appears to prohibit disclosure of certain classes of documents or information in connection with foreign legal proceedings unless done in compliance with

international agreements, in this case, the Convention. (App. E at 46, 47). The petitioners claim they will be subject to criminal penalties if they comply with the discovery requests.

Although the petitioners are French corporations, they sought access to American markets for their products, as the claims in this case arose from a plane crash near New Virginia, Iowa, on August 19, 1980. The plaintiffs filed suit in the United States District Court for the Southern District of Iowa, and have alleged that the plane manufactured by petitioners was defective. Plaintiffs seek damages for personal injuries on product liability, negligence, and breach of implied warranty theories.

In April and June, 1985, plaintiffs served on petitioners several requests for admissions, a request for production of documents, and a set of interrogatories. In response to plaintiffs' discovery requests, petitioners sought a protective order to require that discovery be conducted in accordance with the provisions of the Hague Evidence Convention. They informed the court that, to the extent they had documents or information responsive to these requests, they are located in France and that their disclosure is prohibited by French law except in accordance with the Convention. The motion for a protective order was denied. The magistrate explained that his decision was based on "concern with the impediment to discovery which the Hague Evidence Convention places on litigation in American courts." App. B at 19.

Societe Nationale Industrielle Aerospatiale and Societe de Construction d'Avions de Tourism petitioned the court of appeals for a writ of mandamus to review the

magistrate's order. The court of appeals agreed to consider the petition on the merits and held that the Hague Evidence Convention does not apply to the discovery requests here in question. It stated:

> Although a minority of courts have adopted the position advanced by the Petitioners, in our opinion the better rule, which has been adopted by the vast majority of courts, is that when the district court has jurisdiction over a foreign litigant the Hague Convention does not apply to the production of evidence in that litigant's possession, even though the documents and information sought may physically be located within the territory of a foreign signatory to the Convention. 782 F.2d at 124.

Recognizing that this rule would severely restrict the Convention's scope, the court observed that "the Hague Convention will continue to provide useful, if not mandatory, procedures for discovery abroad from foreign nonparties who are not subject to an American court's jurisdiction and compulsory powers." 782 F.2d at 125.

The court then turned its attention to the French Blocking Statute which, in light of its earlier ruling that the Convention does not apply, the court treated as an independent ground for petitioners' objections to compliance with the discovery orders. On the basis of *Societe Internationale v. Rogers,* 357 U.S. 197 (1958), and its progeny, the court found that considerations of comity do not require any deference to the French Blocking Statute. 782 F.2d at 126-27. Accordingly, it ordered that discovery proceed. 782 F.2d at 127.

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REASONS FOR DENYING THE WRIT

Certiorari should be denied because this case does not yet raise issues for which review is necessary. Where the issue has been considered there is great consistency among federal courts. There is no conflict or imposition upon the sovereignty of foreign nations where legal or judicial proceedings are not being conducted within their borders. However, if petitioners' reasoning is adopted, foreign nations, through the passage of ancillary statutes or their own interpretation of the Convention, could remove control over the discovery process from the United States district courts.

I.

The limited issue of whether a district court can order a party over which it has personal jurisdiction to respond to interrogatories and requests for production in this country, even if that party must resort to sources or information located abroad, does not meet the criteria established by Supreme Court Rules 17 and 18 for review.

Petitioners herein have requested the Court to exercise its discretion to review on writ of certiorari the issues stated in their Petition. Notably absent from their Petition is any discussion or showing why the writ should be granted, in view of the criteria established by Supreme Court Rules 17 and 18.[1] Respondents contend that the criteria are not met by this case, and the writ should accordingly be denied.

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1. SUP. CT. R. 17; SUP. CT. R. 18. The text of these Rules is reproduced at Appendix A to this Brief.

Rule 18 provides that a petition for writ of certiorari "will be granted only upon a showing that the case is of such imperative public importance as to justify the deviation from normal appellate practice and to require immediate settlement in this Court."[2] The instant case is still in the early stages of discovery. The Respondents, plaintiffs below, have served Interrogatories and a Request For Production Of Documents upon Petitioners, who are the defendants below. The district court has personal jurisdiction over the Petitioners, who have objected to complying with the discovery requests on the grounds that they are French corporations, and compliance will require them to produce documents or obtain interrogatory responses from sources in France. Petitioners assert the Hague Convention[3] is the sole medium of discovery for Respondents, notwithstanding the decisions of various federal district courts and the Fifth Circuit to the contrary.[4]

The Convention became effective between the United States and France in 1974, and dates to 1970[5]. In its decision in *In Re Anscheutz & Co., GmbH*[6] the Fifth Circuit stated "this is the first time a circuit court has considered the interplay between the Hague Convention and the Fed-

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2. SUP. CT. R. 18.
3. Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, *opened for signature,* March 18, 1970, 23 U.S.T. 2555, T.I.A.S. No. 7444 (entered into force between the United States and France on October 6, 1974).
4. *See* notes 11-19, *infra,* and accompanying text.
5. *See* note 3, *supra.*
6. 754 F.2d 602 (5th Cir. 1985), *petition for cert. filed,* 54 U.S.L.W. 3084 (U.S. Aug. 13, 1985) (No. 85-98).

eral Rules. . . .'"[7] In addition, the number of decisions directly addressing this issue is a relative handful.[8] Finally, only the Fifth Circuit, and now the Eighth Circuit, have considered this issue, and their decisions are not in conflict.[9] If this discovery issue was of "imperative public importance" one would expect more decisions in view of the length of time the treaty has been in effect. The paucity of appeals and decisions indicates that discovery disputes are either resolved or never arise. For this Court to devote time and attention to this issue at this time is not justified.

The provisions of Rule 17, which are reproduced in full at Appendix A, suggest that a conflict between the federal courts of appeal or a conflict between a state court of last resort and a federal court of appeal, or an undecided question of federal law, or a substantial departure from the accepted and usual course of judicial proceedings are considerations for the Court in determining whether to grant or deny a writ.[10] The latter has not even been sug-

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7. *Id.* at 605.
8. *See* Petitioners' Brief at 11, n. 22 and 23, at 12, n. 24. Petitioners cite nineteen cases. Magistrate Longstaff cited approximately seven cases on the direct issue, and the Eighth Circuit did likewise. The cases relied upon by the Eighth Circuit and Magistrate Longstaff are among those cited by Petitioners.
9. *See* In re Anschuetz & Co., GmbH, *supra* note 6; In re Messerschmitt Bolkow Blohm, GmbH, 757 F.2d 729 (5th Cir. 1985), *cert. granted,* 54 U.S.L.W. 3686-87 (U.S. April 22, 1986) (no. 85-99); In re Societe Nationale Industrielle Aerospatiale and Societe de Construction d'Avions de Tourism, 782 F.2d 120 (8th Cir. 1986), *petition for cert. filed,* — U.S.L.W. — (U.S. April 16, 1986) (No. 85-1695).
10. SUP. CT. R. 17; App. A at 1.

gested by the Petitioners, so the first three must be considered to determine whether there exist any grounds for granting the writ at this time.

The Fifth Circuit has issued two decisions, *In re Anschuetz & Co., GmbH*[11] and *In re Messerschmitt Bolkow Blohm, GmbH*[12]. The Eighth Circuit has now issued its decision in the instant case. *In re Societe Nationale Industrielle Aerospatiale and Societe de Construction d'Avions de Tourism.*[13] Instead of the "sharp division among the lower courts" claimed by the Petitioners, there is no conflict between published decisions of federal courts of appeal. In addition, the district courts in the D.C.[14], Second[15], Third[16], Sixth[17], Seventh[18], and Eighth[19] Circuits

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11. *See* note 6, *supra.*
12. *See* note 9, *supra.*
13. *Id.* Petitioners in their Brief, at 5, n. 3, dispute the Eighth Circuit's assertion that the vast majority of courts have adopted a similar result. If so, the District Court in New York has made the same error as the Eighth Circuit. Compagnie Francaise D'assurance v. Phillips Petroleum, 105 F.R.D. 16, 27 (S.D.N.Y. 1984) (weight of judicial authority clearly to contrary of argument that Hague Convention is exclusive means of discovery evidence abroad).
14. Work v. Bier, 106 F.R.D. 45 (D.D.C. 1985); Laker Airways, Ltd. v. Pan American World Airways, 103 F.R.D. 42 (D.D.C. 1984).
15. International Society for Krishna Consciousness, Inc. v. Lee, 105 F.R.D. 435 (S.D.N.Y. 1984); Murphy v. Reifenhauser KG Maschinenfabrik, 101 F.R.D. 360 (D. Vt. 1984).
16 Lasky v. Continental Products Corp., 569 F. Supp. 1227 (E.D. Pa. 1983).
17. Lowrance v. Michael Weinig, GmbH & Co., 107 F.R.D. 386 (W.D. Tenn. 1985).
18. Graco, Inc. v. Kremlin, Inc., 101 F.R.D. 503 (N.D. Ill., 1984).
19. Testirion, Inc. v. Skoog, Civil No. 4-84-911, slip op. (D.C. Minn. 8-9-85).

have reached similar results. There are, to be sure, contrary decisions, including district court decisions which appear to conflict in the Third and Seventh Circuits[20]. However, Respondents believe the narrow issue involved here is distinguishable, and the apparent conflict is just that—apparent and not real.

It is important to note the real and limited issue presented here. That is, may a district court order a foreign defendant over whom it has personal jurisdiction to respond to interrogatories and requests for production in the United States, even if the defendant must resort to sources or information located abroad? Thus stated, the answer and the cases are in the affirmative.

The well-reasoned decision in *Graco, Inc. v. Kremlin, Inc.*[21], which drew the distinction presented here has been often quoted and cited by subsequent cases.[22] Judge Getzendanner noted that two of the leading cases applying the convention, *Schroeder v. Lufthansa German Airlines*[23] and *Philadelphia Gear Corp. v. American Pfauter Corp.*,[24] "relied heavily on two decisions of the California Court

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20. Philadelphia Gear Corp. v. American Pfauter Corp., 100 F.R.D. 58 (E.D. Pa. 1983); Schroeder v. Luftansa German Airlines, 18 Av. Cas. (CCH) 17,222 (N.D. Ill. 1983). *See also* Petitioners' Brief, at 11, n. 23, *and cases cited therein.*

21. 101 F.R.D. 503 (N.D. Ill. 1984).

22. *See Anschuetz,* 754 F.2d at 610-11; *Societe Nationale,* 782 F.2d at 124-25; *Lowrance,* 107 F.R.D. at 388; *Work,* 106 F.R.D. at 51; *Compagnie Francaise,* 105 F.R.D. at 27; Slauenwhite v. Bekum Maschinenfabriken, BmbH, 104 F.R.D. 616, 617-18 (D. Mass. 1985).

23. 18 Av. Cas. (CCH) 17,222 (N.D. Ill. 1983).

24. 100 F.R.D. 58 (E.D. Pa. 1983).

of Appeal. . . ."[25]. In particular, the California case of *Volkswagenwerk A.G. v. Superior Court,*[26] was viewed by Judge Getzendanner as "the seminal case in this field. . . ."[27] In *Volkswagenwerk,* the lower court ordered on-site inspection to be conducted in Wolfsburg, F.R.G. This is clearly distinguishable from the instant case, and to the extent the subsequent cases relied upon *Volkswagenwerk* as authority, Judge Getzendanner rejected their holdings.[28] Finally, in order to dispel any doubt about his ruling ordering responses to interrogatories and requests for production, he stated "[t]he court emphasizes that it is not ordering any proceeding be conducted within France."[29]

Respondents believe that instead of a conflict, the courts considering the same issue presented here have been very consistent. When discovery moves into the realm of depositions or on-site inspections that may well involve application of the Hague Convention, and in fact, Magistrate Ronald E. Longstaff ruled: "2. If discovery depositions are to be undertaken, the Court will require compliance with the Hague Evidence Convention *if such depositions are to be conducted in France,* based upon the Court's understanding of the current law."[30]

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25. 101 F.R.D. at 517.

26. 123 Cal. App.3d 840, 176 Cal. Rptr. 874 (1981).

27. 101 F.R.D. at 518.

28. 101 F.R.D. at 518-19.

29. *Id.* at 524.

30. Jones v. Societe Nationale Industrielle Aerospatiale, Civil No. 82-453-C, Order (S.D. Iowa, July 31, 1985), at 19 (em-

Volkswagenwerk and its progeny appear to be a minority and divergent line of decisions arising primarily from state supreme courts. To the extent that federal courts have construed the federal rules of civil procedure with the Hague Convention, Respondents believe the results are similar and no conflict exists.

In the absence of any showing that the criteria suggested by Rules 17 and 18 have been met, the Petition should be denied. Petitioners assert that the issue is "a question of undeniable importance." Notwithstanding that assertion, this case, with its limited issue, does not pass muster for review.

II.

It is inappropriate to grant review on writ of certiorari where the record below reveals that the case is not ripe for review, and where a decision in favor of Petitioners will be advisory in nature and will not result in meaningful relief to the parties.

Petitioners wish to force Respondents to resort to the Hague Convention for their preliminary discovery requests. Respondents believe the Petitioners are in error regarding their assertion of the applicabiliay of the Convention, as discussed elsewhere in this Brief. Petitioners also believe the Government of France has given clear

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phasis added). Magistrate Longstaff's Order is reproduced at Appendix B. The language quoted appears at 20. The court in *Lowrance*, 107 F.R.D. 386, expressed a similar view: "Failure of defendant, over whom this court has *in personam* jurisdiction, to comply with the discovery requests will not authorize the court to order discovery in Germany. . . ." *Id.* at 389.

notice of the probable fate of such requests if the Convention is followed, and the parties will have to return to the courts to once again argue about discovery. Review at this stage would be futile.

The Convention, at Chapter III, Article 23, allows a signatory state to declare that "it will not execute Letters of Request issued for the purpose of obtaining pre-trial discovery of documents as known in Common Law countries."[31] France has made this declaration.[32]

Chapter II, Article 18 of the Convention allows a signatory state to declare that it will assist diplomatic officers, consular agents or commissioners to take evidence by employing compulsion.[33] France declined to make this declaration, and further conditioned permission to take

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31. *See* note 3, *supra*. The text of the Article is:

> A Contracting State may at the time of signature, ratification or accession, declare that it will not execute Letters of Request issued for the purpose of obtaining pre-trial discovery of documents as known in Common Law countries.

Id. at Chapter III, Article 23.

32. *Graco*, 101 F.R.D. at 508.

33. *See* note 3, *supra*. The text of the Article is:

> A Contracting State may declare that a diplomatic officer, consular agent or commissioner authorized to take evidence under Articles 15, 16 or 17, may apply to the competent authority designated by the declaring State for appropriate assistance to obtain evidence by compulsion. The declaration may contain such conditions as the declaring State may see fit to impose.
>
> If the authority grants the application it shall apply any measures of compulsion which are appropriate and are prescribed by its law for use in internal proceedings.

Id. at Chapter II, Article 18.

evidence by diplomatic officers, consular agent or commissioners only upon a showing that the witnesses' appearance was voluntary.[34] Finally, the French Blocking Statute purports to prohibit the disclosure of information except pursuant to the provisions of the Hague Convention.[35]

It could not be more clear that the Government of France, as its official policy, intends to essentially bar pre-trial discovery as known in the United States courts. It will use its own unreviewable discretion to decide what, when and where litigants will be able to obtain information necessary to prepare their case, if at all. Far from enhancing considerations of international comity, such conduct would constitute a clear disregard for the substantive and procedural laws of the United States, and result in a grossly unfair advantage for litigants who can on one hand obtain full discovery for their case, and on the other hand, block or severely circumscribe trial preparation by their opponents. As such, the Federal Rules of Civil Procedure and the French Blocking Statute will conflict regardless of what the court decides.

If such a limitation on discovery occurs, and the French laws clearly indicate its possibilities, then the parties will be forced to return to court for further discovery orders. The court will then be forced to decide, after having just decided that the Convention is the exclusive means of discovery, what rights litigants have when a foreign country in reliance upon the Convention, essentially refuses to grant discovery. Any ruling by this court

34. *Graco*, 101 F.R.D. at 508.

35. French Penal Code law No. 80-538 ("French Blocking Statute"). *See* Appendix E.

at this time will simply not give meaningful relief to either party.

Some courts have suggested that litigants who are not satisfied with Hague Convention procedures and compliance can return to court and request the Federal Rules of Procedure be applied,[36] and in fact Petitioners make this same suggestion.[37] This would further negatively impact upon international comity by allowing federal district courts and magistrates to pass upon the conduct of foreign governments, a policy which both the Eighth Circuit and Fifth Circuit have criticized as being "the greatest insult to a civil law country's sovereignty. . . ."[38]

Finally, Petitioners are requesting this Court to issue what would essentially be an advisory opinion regarding the French Blocking Statute. As such, this case is not ripe for review. It is interesting to note how Petitioners argue that the Convention is or should be the exclusive means for obtaining evidence abroad, yet also suggest that the district courts may be free to disregard the Convention. However, the French Blocking Statute is the real impediment to discovery, and if parties first resort to the Convention provisions, and then seek discovery orders from the district court, the French Blocking Statute *still* remains as an im-

36. *E.g., Philadelphia Gear Corp.*, 100 F.R.D. at 61.

37. *See* Petitioners' Brief, at 13: "principles of comity require in the present case that resort be made to the Hague Evidence Convention, at *least in the first instance.*" (emphasis added). *See also id.* at 16.

38. *Anschuetz*, 754 F.2d at 613; *Societe Nationale*, 782 F.2d at 125-26. *See also Murphy*, 101 F.R.D. at 363 (comity does not require first resort to Convention when effort would be futile).

pediment to discovery. Petitioners' arguments are simply misdirected.

The French Blocking Statute prescribes criminal penalties for the violation of its terms.[39] However, the Eighth Circuit below found that the record did not reveal whether the Petitioners had notified the appropriate French Minister of the requested discovery or if they had attempted to obtain a waiver of prosecution from the French government.[40] Likewise, there is no indication of any threats to prosecute Petitioners, and there is some evidence that the law has only been enforced sporadically.[41]

In view of the foregoing, Petitioners' complaints regarding their possible liabilities under the blocking statute are unsupported in the record, hypothetical, and possibly nonexistent. This is clearly an instance where the court is being asked to render an advisory opinion on an unripe case.

If the Court denies the petition, and Petitioners seek a waiver from the appropriate French minister, then if the waiver is granted the entire issue is moot. If the waiver is denied, and Petitioners are threatened with actual prosecution, then the litigants and the district court can at-

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39. *See* note 35, *supra*. The translated text provides:

> "Art 3. Without prejudice to heavier penalties prescribed by law, any breach of Articles 1 and 1A of this Act shall be punishable by imprisonment for two to six months and a fine of 10,000 to 120,000 F or either."

40. *Societe Nationale*, 782 F.2d at 127.

41. Toms, *The French Response To Extraterritorial Application of United States Antitrust Laws*, *15 Int'l Law.* 585, 599, 605 (1981).

tempt to fashion an acceptable procedure for discovery. Only at that stage would this case be ready for review, and only when all avenues have been exhausted or foreclosed.

Respondents submit that this case is not ripe for review, and that because of that fact any opinion would be essentially advisory in nature. In addition, the Court cannot at this stage render meaningful relief without going beyond the narrow issues presented by the record.

CONCLUSION

The Petition For A Writ Of Certiorari should be denied.

Respectfully submitted,

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APPENDIX A

RULE 17. Considerations governing review on certiorari

.1. A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefore. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.

(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

.2. The same general considerations outlined above will control in respect of petitions for writs of certiorari to review judgments of the United States Court of Appeals for the Federal Circuit, the United States Court of Military Appeals, and of any other court whose judgments are reviewable by law on writ of certiorari.

RULE 18. Certiorari to a federal court of appeals before judgment

A petition for writ of certiorari to review a case pending in a federal court of appeals, before judgment is given in such court, will be granted only upon a showing that the case is of such imperative public importance as to justify the deviation from normal appellant practice and to require immediate settlement in this Court.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

CIVIL NO. 82-453-C

DENNIS F. JONES,
Plaintiff,

vs.

SOCIETE NATIONALE INDUSTRIELLE AEROSPATIALE,
a French Corporation, et al.,
Defendants.

JOHN GEORGE, et al.,
Plaintiffs,

vs.

SEED & GRAIN CONSTRUCTION CO.,
an Iowa Corporation, et al.,
Defendants.

[Filed July 31, 1985]

ORDER

This matter is now before the Court upon the mation for protective order filed by defendants Societe Nationale Industrielle Aerospatiale and Societe De Construction d'Avions De Tourisme on June 12, 1985. Plaintiffs filed a resistance to this motion on June 19, 1985. The parties have submitted briefs and oral arguments were presented to the Court at a hearing on Tuesday, July 16, 1985.

I. BACKGROUND

Defendants are French corporations engaged in advertising and selling aircraft and component parts in the

United States. After an accident occurred on August 19, 1980, involving an aircraft designed and manufactured by the defendants, this lawsuit was instituted. The defendants have appeared and answered and are subject to this Court's jurisdiction.

The defendants responded to plaintiff's initial requests for production in August 1983 and in return, propounded interrogatories and made requests for production to plaintiff. Plaintiff has now served interrogatories upon the defendants and additional requests for production and admissions, which defendants resist. Defendants argue that plaintiff must comply with the Hague Evidence Convention in order to properly undertake discovery in this lawsuit. Plaintiff resists, claiming in personam jurisdiction over the defendant nullifies application of the Hague Convention and, further, that the courts in this country have interpreted the Convention as applying to taking evidence abroad, not within this country.

II. APPLICABLE LAW AND DISCUSSION

The issue brought before the Court is whether the Hague Evidence Convention supplants application of the discovery procedures of the Federal Rules of Civil Procedure to foreign nationals subject to in personam jurisdiction in a U.S. court.

The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters provides three methods of obtaining evidence abroad: by a letter rogatory, requesting authorities in a signatory state to obtain evidence or to perform some other judicial act to obtain evidence; by notice to appear before an American consulate officer or foreign officer, or by designation of a private commissioner. The Hague Convention, 23 U.S.T. 2555, TIAS No. 7444. Under the letter rogatory method, the letter of request is transmitted to the central authority of the foreign state and must specify:

> (a) the authority requesting its execution and the authority requested to execute it, if known to the requesting authority;
>
> (b) the names and addresses of the parties to the proceedings and their representatives, if any;
>
> (c) the nature of the proceedings for which the evidence is required, giving all necessary information in regard thereto;
>
> (d) the evidence to be obtained or other judicial act to be performed.

Other information as needed must also be specified, according to Article 3. 23 U.S.T. 2558-59. Letters of Request must be in the language of the authority requested to execute it or be accompanied by a translation into that language. Art. 4. France has made an authorization pursuant to Art. 33, providing that it will execute only letters in French or accompanied by a translation in French. 28 U.S.C.A. § 1635-1960, 1984 pocket part, p. 90.

While the issue of whether the Hague Convention must override the Federal Rules of Civil Procedure is not widely addressed in case law, there appears to be a split among the jurisdictions which have addressed the issue.

The most recent case resolving the issue in favor of permitting discovery is *In re Anschuetz & Co., GmbH*, 754 F.2d 602 (5th Cir. 1985). This case involved product liability claims arising out of the collision of two ferry

boats within the state of Louisiana. Anschuetz, a German corporation, was third-partied in as designer of a steering device which allegedly failed, contributing to the cause of the accident. Third-party plaintiff Gijonesa served interrogatories, requests for production and notices of depositions, to which Anschuetz responded with a motion for protective order. Upon petition for writ of mandamus, the Fifth Circuit invited amicus curiae briefs from the Federal Republic of Germany and from the U.S. Department of Justice as the question was being considered for the first time by a circuit court. In a carefully researched opinion, the court reached the conclusion that the Hague Convention would be used with

> the involuntary deposition of a party conducted in a foreign country, and with the production of documents or other evidence gathered from persons or entities in the foreign country who are not subject to the court's in personam jurisdiction. The Hague Convention has no application at all to the production of evidence in this country by a party subject to the jurisdiction of a district court pursuant to the Federal rules. So long as discovery is sought for the identity and qualifications of witnesses there is no basis to suggest that supplying this information amounts to obtaining evidence in Germany.

Id. at 615.

Some of the language explaining the court's rationale for this conclusion should be noted:

> Anschuetz' interpretation of the treaty, taken to its logical conclusion, would give foreign litigants an extraordinary advantage in United States courts. Insofar as Anschuetz seeks discovery it would be permitted the full range of free discovery procedures provided by the Federal Rules. But when a United States adversary sought discovery, this discovery would be limited to the cumbersome procedures and narrow range authorized by the Convention. Further, we believe that requiring domestic litigants to resort to the Hague Convention to compel discovery against their foreign adversaries encourages the concealment of information—a result directly antithetical to the express goals of the Federal Rules and the Hague Convention which aim to encourage the flow of information among adversaries.

Id. at 606. The court rejected the argument that the Hague convention was exclusive:

> "the fact that documents are situated in a foreign country does not bar their discovery." (quoting *Cooper Industries v. British Aerospace,* 102 F.R.D. 918 (S.D.N.Y. 1984) and citing *Marc Rich & Co. v. U.S.,* 707 F.2d 663, 667 (2d Cir.) (grand jury investigation), *cert. denied,* 103 S. Ct. 3555 (1983).
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> • • •
>
> The production demanded here does not infringe on British sovereignty as it calls merely for documents, not a personal appearance. Defendant cannot be allowed to shield crucial documents from discovery by parties with whom it has dealt in the United States merely by storing them with its affiliate abroad. Nor can it shield documents by destroying its own copies and relying on customary access to copies maintained by its affiliate abroad. If one defendant could so easily evade discovery, every United States company would have a foreign affiliate for storing sensitive documents.
>
> (quoting *Cooper,* 102 F.R.D. 920).

Id. at 607. *Cooper,* it should be noted, dealt with the discovery of documents in the possession of the defendant's

British affiliate; by contrast, *Jones v. Societe* (and *Anschuetz*) deal with documents in the possession of a totally foreign corporation. The Fifth Circuit further backed up its position with language from a federal district court sitting in Illinois deciding similar discovery issues in a patent infringement case. The court in *Graco v. Kremlin, Inc.*, 101 F.R.D. 503 (N.D. Ill. 1984), in permitting the discovery from a French corporation without requiring compliance with the Hague Convention, explained the reasons for the Hague Convention:

> It cannot be denied that foreign displeasure played some part in shaping the convention, but it is a mistake, the court believes, to view the convention as an international agreement to protect foreign nationals from American discovery when they are parties properly before American courts. Two important purposes of an international convention of this type relate to discovery of non-parties, and would justify the convention's existence regardless of how the convention is deemed to apply with respect to parties before the court. First, a non-party witness may be willing to be deposed at home, but may be unwilling to travel to the country in which the litigation is proceeding. Since some countries would consider the taking of evidence within their borders a usurpation of judicial prerogative, an international agreement setting up a framework for seeking and granting permission has great value, allowing evidence to be taken without affront to local authorities. Second, an unwilling non-party witness simply cannot be reached, if outside the court's jurisdiction, unless authorities in the witness' state use their authority to compel the giving of evidence. An international agreement provides a framework for the invocation of a foreign authority's compulsory powers, making accessible evidence which otherwise would not have been accessible. A multi-state convention, rather than a series of two state agreements, confers the added benefit of standardized procedures.

Id. at 519-20 (quoted in *Anschuetz* at 611). Civil law states take the position that gathering evidence *within* the state is exclusively within the province of that state's courts; any encroachment on this function may be regarded as a violation of the state's "judicial sovereignty." *Volkswagenwerk A.G. v. Superior Court*, 123 Cal. App. 3d 840, 853, 176 Cal. Rptr. 874, 881 (1982).

The *Anschuetz* court found "particularly apt the [*Graco*] court's observation that the Convention does not require deference to a foreign country's judicial sovereignty over documents, people, and information—if this is really how civil law judicial sovereignty is understood—when such documents are to be produced in the United States. . . ." *Anschuetz*, 754 F.2d at 611. The Fifth Circuit determined that "matters preparatory to compliance with discovery orders in the United States, even where the preparatory acts occur in foreign nations, do not constitute discovery in the foreign nation as addressed by the Hague Convention." *Id.* Another effect of requiring that interrogatories and document requests be directed through foreign authorities under the Convention, the court noted, was the drastic and costly change in handling litigation which would occur due to the procedures required under the Convention. *Id.* at 612.

The Fifth Circuit did note that judicial power over international discovery should be "tempered by a healthy respect for the principles of comity", *id.* at 614 but found

> [T]he Hague Evidence Convention contains no express provision for exclusivity. In addition, extraterritorial discovery has been a standard practice of American courts for some time, and there is no evidence that the American negotiators, the Department of State, or the Congress intended to prohibit the prac-

> tice. In fact, the Senate Report emphasized that the Convention was intended to improve, not thwart, the means of securing evidence abroad.

As noted by defendants, the *Anschuetz* court did not order discovery or issue mandamus, but did direct the lower court to consider fashioning its discovery orders in light of the principles discussed by the Fifth Circuit. *Id.* The Court of Appeals did state that the trial court could order documents to be produced and witnesses to be examined in the United States if the defendant was not "voluntarily forthcoming in Germany" and that the "full range of sanctions available in the federal rules" could be applied to parties over whom the court had in personam jurisdiction. *Id.*

Other courts which have addressed the issue have allowed discovery and discussed the arguments now being advanced by the defendant French corporations. Regarding defendant Lufthansa's argument that the Hague Convention is the exclusive means for compelling it to produce documents and secure the deposition of two of its officers:

> Nowhere in these [discovery] Rules is there the slightest suggestion that a party properly before the Court may not avail itself of these discovery rights against another party within the jurisdiction of the Court merely because the documents sought or the persons to be deposed are not located in the United States. Indeed, the Rules clearly contemplate their applicability abroad if the United States Court has jurisdiction. *See, e.g.*, Rule 28(b), Fed. R. Civ. P.

Laker Airways, Ltd. v. Pan American World Airways, 103 F.R.D. 42, 48 (D.C.D.C. 1984). In determining that the

issue was not a matter of supremacy over state law, but rather which federal law—the Hague Convention or the Federal Rules of Civil Procedure—should be applied, the district court for the Southern District of New York reasoned:

> A finding that the production of documents is precluded by foreign law does not conclude a discovery dispute. A United States court has the power to order any party within its jurisdiction to testify or produce documents regardless of a foreign sovereign's views to the contrary. Society International v. Rogers, 357 U.S. 197, 204-06 (1958); United States v. First National City Bank, 396 F.2d 897, 900-09 (2d Cir. 1968); United States v. Vetco, 644 F.2d 1324, 1329 (9th Cir., cert. denied, 454 U.S. 1098 (1981). Plaintiffs have urged this Court to defer to the French [blocking] statute and to decline to order the requested discovery.
>
> In fact, it is suggested that we are required to do so, because Article 11 and 21 of the Hague Convention on the Taking of Evidence Abroad would permit a party confronted with a statute such as Article 1 to refuse to give evidence. Because the United States is a signatory to the Convention, the argument continues, this Court is bound by its provision and must also permit plaintiffs to refuse to produce the documents. In essence, plaintiffs argue that the Articles of the Hague Convention withdraw from this court the right to employ the discovery devices provided in the Federal Rules of Civil Procedure because they conflict with the provisions of the French Law No. 80-538.
>
> The Hague Convention, signed by both France and the United States, is an international treaty and as such is entitled to be recognized as part of the supreme law of the land. (citation omitted.) The Federal Rules of Civil

Procedure, duly enacted by Congress, are also part of the supreme law of the land. Absent a direct conflict, our duty is to enforce them both. Nothing in the legislative history of the Hague Convention nor in the Congressional proceedings at the time of its adoption, suggests that Congress intended to replace, restrict, modify or repeal the Federal Rules. Indeed, Philip Amram, a member of the United States delegation to the 1968 session of the Convention, described its provisions as a 'climax [of] more than a generation of effort . . . by those interested in modernizing and improving international judicial assistance' and stated it would effect 'no major changes in U.S. procedure [nor require any] changes in U.S. legislation or rules.' (citation omitted.)

Treaties should be construed so as to effect their purposes (citation omitted), and to be as consistent, insofar as possible, with coexisting statutes, (citation omitted). The goal of the Hague Convention was to facilitate and increase the exchange of information between nations. It would not serve this goal to transform its provisions into a means to frustrate the discovery process. We conclude, therefore, that this Court is not required to defer to the French statute by virtue of the Hague Convention.

Compagnie Francaise d'Assurance v. Phillips Petroleum Co., 81 Civ. 4463-CLB, slip op. at 10-12 (S.D.N.Y. Jan. 25, 1983) (quoted in *Anschuetz*, 754 F.2d at 613 n.28 and *Laker*, 103 F.R.D. at 49).[1]

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[1]Other cases of note on this issue, but not addressing the Hague Convention argument specifically: *In re Uranium Antitrust Litigation*, 480 F. Supp. 1138, 1148 (N.D. Ill. 1979) ("Once

(Continued on following page)

On the other side of the judicial coin are the opinions of a few courts which have required compliance with the Hague Convention. In *Volkswagenwerk A. G. v. Superior Court*, 123 Cal. App. 3d 840, 176 Cal. Rptr. 874 (1982), the plaintiff in the originating case sought inspection of defendant's German plant and production of documents and other discovery in Wolfsburg, West Germany. The California Court of Appeals decided on the basis of international comity and judicial restraint that plaintiffs had to comply with the Hague Convention in obtaining this discovery which was within the German courts' "judicial sovereignty." *Id.* at 853, 176 Cal. Rptr. at 881. Similarly, in

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personal jurisdiction over the person and control over the documents by the person are present, a United States court has power to order production of the documents. The existence of a conflicting foreign law which prohibits the disclosure of the requested documents does not prevent the exercise of this power."); *La Chemise Lacoste v. General Mills, Inc.*, 53 F.R.D. 596, 604 (D. Del. 1971) ("There is no affidavit in the record indicating the bulk or cost of shipping the documents here and really no factual basis on which the Court may sustain [the objection to production of documents located in France]. It would appear offhand that shipping the documents to the United States would entail less expense than attorneys making the trip to France for such discovery."); *see also Murphy v. Reifenhauser KG Maschinenfabrik*, 101 F.R.D. 360, 363 ("[C]omity [in the legal sense . . . the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation] does not require plaintiff [administrator of estate of son who was killed by a machine made by defendant] to proceed first under the Convention in this case, particularly at this relatively late stage of discovery, and particularly where it appears that a request for production of documents under the Convention would be futile." . . . We need not attribute defendant's delay in raising this issue to bad faith in order to find that this case should not be further prolonged for many months in order to accommodate a somewhat hypothetical conflict between ordinary American discovery and German sovereignty.").

Pierburg GmbH & Co. KG v. Superior Court, 137 Cal. App. 3d 238, 186 Cal. Rptr. 876 (1982), the court vacated an order in a products liability action which required the defendant West German corporation to answer written interrogatories without compliance with the Hague Convention. This determination was also based on the "supremacy" of the Hague Convention as federal over state law (California Rules of Civil Procedure) and "in exercise of judicial restraint based on international comity." *Id.* at 245, 186 Cal. Rptr. at 880. In denying a motion to compel answers to interrogatories and to produce documents, the District Court for the Eastern District of Pennsylvania required the plaintiff to comply with the Hague Convention. *Philadelphia Gear Corp. v. American Pfauter Corp. & BHS-Dr. Ing. Hofler GmbH,* 100 F.R.D. 58 (E.D. Pa. 1983). In coming to this decision, the court relied on the California cases, stating:

> To allow the forum court to supplement the convention with its own practices would not promote uniformity in the gathering of evidence nor generate a spirit of cooperation among signatories to the treaty. . . . Obviously, to permit one sovereign to foist its legal procedures upon another whose internal rules are dissimilar would run afoul of the interests of sound international relations and comity.

Id. at 60. In a footnote, the court found no merit in plaintiff's argument that because defendant had served discovery requests pursuant to the Federal Rules of Civil Procedure, it should be estopped from asserting the applicability of the Hague Convention. "The Convention is at issue only when a litigant from a signatory country seeks evidence in another signatory country other than where the case is pending. Hofler's request did not seek

to take any evidence abroad. It was directed to a party residing in the country where the litigation was initiated." *Id.* at 61 n.5.

These cases were distinguished in *Graco v. Kremlin, Inc.,* 101 F.R.D. 503, 517-24 (N.D. Ill. 1984). The *Graco* court noted that in *Volkswagenwerk,* discovery orders involving formal discovery proceedings to be conducted *in* West Germany were involved, which would call for application of the Hague Convention. *Pierburg,* which involved only written interrogatories to a West German defendant, was, in the opinion of the *Graco* court, not well reasoned and distinguishable from *Volkswagenwerk,* upon which the *Pierburg* court relied. *Graco,* 101 F.R.D. at 518-19. *Philadelphia Gear,* the *Graco* court noted,

> cites the Convention's purpose of promoting mutual judicial cooperation, apparently associating this notion also with principles of comity. . . . International judicial cooperation is, however, or at least should be, an extraordinary measure, employed to protect the sovereign interests of another country when those interests truly are implicated. Trying (or pre-trying) a case in two different countries' courts is not a desirable way of handling routine litigation. Involving two judicial systems in a single lawsuit is as likely to disrupt international relations as it is to promote them, especially when the two systems are brought together for discovery purposes.

Id. at 523. Examining Article 23 of the Convention, which permits a state to refuse to execute a letter rogatory issued to obtain pretrial discovery of documents, the *Graco* court concluded that such a broad interpretation as the *Philadelphia Gear* court gave would give foreign courts power over the conduct of litigation in American courts:

> Either American courts would surrender jurisdiction by treating the decisions of foreign authorities as

> final and unreviewable, or they would invite endless motions and real international friction by second-guessing those decisions. The court cannot understand why a requirement making such judicial cooperation routine should be inferred from a treaty containing very little language to justify its inference, and the court also does not believe that principles of international comity demand (or are served by) such a requirement.

Id. at 524. The court did not require Graco to proceed only under the Convention, emphasizing that it was not ordering that any proceeding be conducted within France.

Defendants argue that they are caught in a legal "Catch-22" in that, by French statute, they are subject to penalty if they provide commercial information to foreign public entities without complying with the Hague Convention. French Penal Code, Law. No. 80-538, Articles 1 and 1-*bis*. At the same time defendants are subject to sanctions by American courts if they fail to cooperate in discovery.

The French law in question was originally "inspired to impede enforcement of United States antitrust laws," but was phrased without a requirement that antitrust law be involved. *See* Tomε, *The French Response to Extra-territorial Application of United States Antitrust Laws,* 15 Int'l Law. 585, 586, (1981). The provision of the law in question here is Article 1-*bis* which provides:

> Subject to any treaties or international agreements and the laws and regulations in force, it is prohibited for any person to request, to investigate or to communicate in writing, orally or by any other means, documents or information relating to economic, commercial, industrial, financial or technical matters leading to the establishment of proof with a view to

> foreign administrative or judicial proceedings or as a part of such proceedings.

Toms, *supra* at 611. Violation of this section is punishable by a prison term of two to six months and/or a fine of 10,000 to 120,000 Francs. French Penal Code, Law No. 80-538, Article 3. Article 1-*bis'* application is limited to discovery within French territory, Toms, *supra* at 595, and a party who is affected by the law may seek a waiver of its provisions from the appropriate French minister, to whom they are to report such requests. French Penal Code, Law No. 80-538, Article 2; *see Soletanche and Rodio v. Brown and Lambrecht,* 99 F.R.D. 269, 271 (N.D. Ill. 1983) (holding compliance with court's discovery order would not impose "too great a burden" on plaintiffs as they were only being required to contact the appropriate minister, as required by law, and request a waiver). It appears that Articles 1 and 1-*bis* have not been strictly enforced in France, *see* Toms, *supra* at 599 and 605. The Toms article also notes that "the legislative history [of the Law] shows only that the Law was adopted to protect French interests from abusive foreign discovery procedures and excessive assertions of extraterritorial jurisdiction. Nowhere is there an indication that the Law was to impede litigation preparations by French companies, either for their own defense or to institute lawsuits abroad to protect their interests, and arguably such applications were unintended." Toms, *supra* at 598.

The "Catch-22" situation which defendants face has been addressed by the federal district court sitting in the Northern District of Illinois on at least two occasions. In *Soletanche and Rodio v. Brown and Lambrecht,* the court ordered plaintiff French corporations to answer inter-

rogatories and produce documents in spite of Law No. 80-538 and potential criminal liability. 99 F.R.D. 269 (N.D. Ill. 1983).

> As the Seventh Circuit recently stated, "the fact that foreign law may subject a person to criminal sanctions in the foreign country if he produces certain information does not automatically bar a domestic court from compelling production." (Citations omitted). In doing so, however, the court is required to engage in a sensitive balancing of the competing interests at stake in compelling such production. . . .
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> . . . [T]he factors to consider in balancing competing interests . . . are: vital national interests of each of the states; the extent and the nature of the hardship that inconsistent enforcement actions would impose upon the person; the extent to which the required conduct is to take place in the territory of the other state; the nationality of the person; and the extent to which enforcement by action of either state can reasonably be expected to achieve compliance with the rule prescribed by that state.

Id. at 271. *See also Graco v. Kremlin, Inc.*, 101 F.R.D. 503 (N.D. Ill. 1984) for a discussion of the problems created by Article 1-*bis*.

The vital national interest in this case is protection of United States citizens from harmful foreign products and compensation for injuries caused by such products. France's interest is protection of their citizens from intrusive foreign discovery procedures; however, it does not appear that France has strictly enforced the law. Defendants face no extraordinary hardship at this point as it is not clear that the law will be strictly enforced against them. The required conduct does not have to take place in France as the interrogatories can be answered in the United

States and the documents requested produced there. The defendants are French national corporations. The final factor does not come into consideration here as the Court is not at this stage concerned with enforcement of discovery orders.

III. CONCLUSION

Based on the foregoing discussion, this Court denies the defendants' motion for protective order insofar as it relates to answering interrogatories, producing documents and making admissions. This decision is based on the Court's concern with the impediment to discovery which the Hague Evidence Convention places on litigation in American courts and the potential interference with such proceedings which forcing compliance with foreign court procedures would cause.

> If interpreted as preempting routine interrogatories and document requests, the Convention really would be much more than an agreement on taking evidence abroad, which is what it purports to be. Instead, the Convention would amount to a major regulation of the overall conduct of litigation between nationals of different signatory states, raising a significant possibility of very serious interference with the jurisdiction of the court in which the litigation is begun. The solicitude for the judicial sovereignty of civil law countries shown in *Schroeder, Philadelphia Gear,* and *Pierburg* apparently is unmatched by any recognition that they are suggesting a startling limitation on the sovereign powers of this country, as expressed through its courts. Treating the Convention procedures as exclusive would make foreign authorities the final arbiters of what evidence may be taken from their nationals, even when those nationals are parties properly within the jurisdiction of an American court.

Graco, 101 F.R.D. at 521-22. This Court is not dealing with a conflict between state rules of civil procedure and a treaty, but with a conflict between two essentially equal federal laws. To permit the Hague Evidence Convention to override the Federal Rules of Civil Procedure would frustrate the courts' interests, which particularly arise in products liability cases, in protecting United States citizens from harmful products and in compensating them for injuries arising from use of such products. As to defendants' argument of illegality, this Court determines that the United States' interests are stronger than potential French interests, given no strong evidence that Law No. 80-538 is strictly enforced. The conduct to be ordered does not have to take place in France and the procedures to be ordered are not greatly intrusive or abusive.

For these reasons, the Court orders discovery as follows:

1. Defendant shall answer the interrogatories propounded by plaintiffs and respond to plaintiffs' request for admissions and for production of documents on or before October 1, 1985.

2. If discovery depositions are to be undertaken, the Court will require compliance with the Hague Evidence Convention if such depositions are to be conducted in France, based on the Court's understanding of the current law.

IT IS SO ORDERED.

Dated this 31st day of July, 1985.

/s/ R. E. LONGSTAFF
R. E. Longstaff
U.S. Magistrate

APPENDIX C

CONVENTION ON THE TAKING OF EVIDENCE ABROAD IN CIVIL OR COMMERCIAL MATTERS

The States signatory to the present Convention.

Desiring to facilitate the transmission and execution of Letters of Request and to further the accommodation of the different methods which they use for this purpose.

Desiring to improve mutual judicial co-operation in civil or commercial matters,

Have resolved to conclude a Convention to this effect and have agreed upon the following provisions—

CHAPTER 1—LETTERS OF REQUEST

Article 1

In civil or commercial matters a judicial authority of a Contracting State may, in accordance with the provisions of the law of that State, request the competent authority of another Contracting State, by means of a Letter of Request, to obtain evidence, or to perform some other judicial act.

A Letter shall not be used to obtain evidence which is not intended for use in judicial proceedings, commenced or contemplated.

The expression 'other judicial act' does not cover the service of judicial documents or the issuance of any process by which judgments or orders are executed or enforced, or orders for provisional or protective measures.

Article 2

A Contracting State shall designate a Central Authority which will undertake to receive Letters of Request coming from a judicial authority or another Contracting State and to transmit them to the authority competent to execute them. Each State shall organize the Central Authority in accordance with its own law.

Letters shall be sent to the Central Authority of the State of execution without being transmitted through any other authority of that State.

Article 3

A Letter of Request shall specify—

(a) the authority requesting its execution and the authority requested to execute it, if known to the requesting authority;

(b) the names and addresses of the parties to the proceedings and their representatives, if any;

(c) the nature of the proceedings for which the evidence is required, giving all necessary information in regard thereto;

(d) the evidence to be obtained or other judicial act to be performed.

Where appropriate, the Letter shall specify, inter alia—

(e) the names and addresses of the persons to be examined;

(f) the questions to be put to the persons to be examined or a statement of the subject-matter about which they are to be examined;

(g) the documents or other property, real or personal, to be inspected;

(h) any requirement that the evidence is to be given on oath or affirmation, and any special form to be used;

(i) any special method or procedure to be followed under Article 9.

A Letter may also mention any information necessary for the application of Article 11.

No legalization or other like formality may be required.

Article 4

A Letter of Request shall be in the language of the authority requested to execute it or be accompanied by a translation into that language.

Nevertheless, a Contracting State shall accept a Letter in either English or French, or a translation into one of these languages, unless it has made the reservation authorized by Article 33.

A Contracting State which has more than one official language and cannot, for reasons of internal law, accept Letters in one of these languages for the whole of its territory, shall, by declaration, specify the language in which the Letter or translation thereof shall be expressed for execution in the specified parts of its territory. In case of failure to comply with this declaration, without justi-

fiable excuse, the costs of translation into the required language shall be borne by the State of origin.

A Contracting State may, by declaration, specify the language or languages other than those referred to in the preceding paragraphs, in which a Letter may be sent to its Central Authority.

Any translation accompanying a Letter shall be certified as correct, either by a diplomatic officer or consular agent or by a sworn translator or by any other person so authorized in either State.

Article 5

If the Central Authority considers that the request does not comply with the provisions of the present Convention, it shall promptly inform the authority of the State of origin which transmitted the Letter of Request, specifying the objections to the Letter.

Article 6

If the authority to whom a Letter of Request has been transmitted is not competent to execute it, the Letter shall be sent forthwith to the authority in the same State which is competent to execute it in accordance with the provisions of its own law.

Article 7

The requesting authority shall, if it so desires, be informed of the time when, and the place where, the proceedings will take place, in order that the parties concerned, and their representatives, if any, may be present. This information shall be sent directly to the parties or their representatives when the authority of the State of origin so requests.

Article 8

A Contracting State may declare that members of the judicial personnel of the reqeusting authority of another Contracting State may be present at the execution of a Letter of Request. Prior authorization by the competent authority designated by the declaring State may be required.

Article 9

The judicial authority which executes a Letter of Request shall apply its own law as to the methods and procedures to be followed.

However, it will follow a request of the requesting authority that a special method or procedure be followed, unless this is incompatible with the internal law of the State of execution or is impossible of performance by reason of its internal practice and procedure or by reason of practical difficulties.

A Letter of Request shall be executed expeditiously.

Article 10

In executing a Letter of Request the requested authority shall apply the appropriate measures of compulsion in the instances and to the same extent as are provided by its internal law for the execution of orders issued by the authorities of its own country or of requests made by parties in internal proceedings.

Article 11

In the execution of a Letter of Request the person concerned may refuse to give evidence in so far as he has a privilege or duty to refuse to give the evidence—

(a) under the law of the State of execution; or

(b) under the law of the State of origin, and the privilege or duty has been specified in the Letter, or, at the instance of the requested authority, has been otherwise confirmed to that authority by the requesting authority.

A Contracting State may declare that, in addition, it will respect privileges and duties existing under the law of States other than the State of origin and the State of execution, to the extent specified in that declaration.

Article 12

The execution of a Letter of Request may be refused only to the extent that—

(a) in the State of execution the execution of the Letter does not fall within the functions of the judiciary; or

(b) the State addressed considers that its sovereignty or security would be prejudiced thereby.

Execution may not be refused solely on the ground that under its internal law the State of execution claims exclusive jurisdiction over the subject-matter of the action or that its internal law would not admit a right of action on it.

Article 13

The documents establishing the execution of the Letter of Request shall be sent by the requested authority to the requesting authority by the same channel which was used by the latter.

In every instance where the Letter is not executed in whole or in part, the requesting authority shall be informed immediately through the same channel and advised of the reasons.

Article 14

The execution of the Letter of Request shall not give rise to any reimbursement of taxes or costs of any nature.

Nevertheless, the State of execution has the right to require the State of origin to reimburse the fees paid to experts and interpreters and the costs occasioned by the use of a special procedure requested by the State of origin under Article 9, paragraph 2.

The requested authority whose law obliges the parties themselves to secure evidence, and which is not able itself to execute the Letter, may, after having obtained the consent of the requesting authority, appoint a suitable person to do so. When seeking this consent the requested authority shall indicate the approximate costs which would result from this procedure. If the requesting authority gives its consent it shall reimburse any costs incurred; without such consent the requesting authority shall not be liable for the costs.

CHAPTER II—TAKING OF EVIDENCE BY DIPLOMATIC OFFICERS, CONSULAR AGENTS AND COMMISSIONERS

Article 15

In a civil or commercial matter, a diplomatic officer or consular agent of a Contracting State may, in the territory of another Contracting State and within the area where he exercises his functions, take the evidence without compulsion of nationals of a State which he represents in aid of proceedings commenced in the courts of a State which he represents.

A Contracting State may declare that evidence may be taken by a diplomatic officer or consular agent only if permission to that effect is given upon application made by him or on his behalf to the appropriate authority designated by the declaring State.

Article 16

A diplomatic officer or consular agent of a Contracting State may, in the territory of another Contracting State and within the area where he exercises his functions, also take the evidence, without compulsion, of nationals of the State in which he exercises his functions or of a third State, in aid of proceedings commenced in the courts of a State which he represents, if—

(a) a competent authority designated by the State in which he exercises his functions has given its permission either generally or in the particular case, and

(b) he complies with the conditions which the competent authority has specified in the permission.

A Contracting State may declare that evidence may be taken under this Article without its prior permission.

Article 17

In a civil or commercial matter, a person duly appointed as a commissioner for the purpose may, without compulsion, take evidence in the territory of a Contracting State in aid of proceedings commenced in the courts of another Contracting State if—

(a) a competent authority designated by the State where the evidence is to be taken has given its permission either generally or in the particular case; and

(b) he complies with the conditions which the competent authority has specified in the permission.

A Contracting State may declare that evidence may be taken under this Article without its prior permissions.

Article 18

A Contracting State may declare that a diplomatic officer, consular agent or commissioner authorized to take evidence under Articles 15, 16 or 17, may apply to the competent authority designated by the declaring State for appropriate assistance to obtain the evidence by compulsion. The declaration may contain such conditions as the declaring State may see fit to impose.

If the authority grants the application it shall apply any measures of compulsion which are appropriate and are prescribed by its law for use in internal proceedings.

Article 19

The competent authority, in giving the permission referred to in Articles 15, 16 or 17, or in granting the application referred to in Article 18, may lay down such conditions as it deems fit, *inter alia,* as to the time and place of the taking of the evidence. Similarly it may require that it be given reasonable advance notice of the time, date and place of the taking of the evidence; in such a case a representative of the authority shall be entitled to be present at the taking of the evidence.

Article 20

In the taking of evidence under any Article of this Chapter persons concerned may be legally represented.

Article 21

Where a diplomatic officer, consular agent or commissioner is authorized under Articles 15, 16 or 17 to take evidence—

(a) he may take all kinds of evidence which are not incompatible with the law of the State where the evidence is taken or contrary to any permission granted pursuant to the above Articles, and shall have power within such limits to administer an oath or take an affirmation;

(b) a request to a person to appear or to give evidence shall, unless the recipient is a national of the State where the action is pending, be drawn up in the language of the place where the evidence is taken or be accompanied by a translation into such language;

(c) the request shall inform the person that he may be legally represented and, in any State that has not filed a declaration under Article 18, shall also inform him that he is not compelled to appear or to give evidence;

(d) the evidence may be taken in the manner provided by the law applicable to the court in which the action is pending provided that such manner is not forbidden by the law of the State where the evidence is taken;

(e) a person requested to give evidence may invoke the privileges and duties to refuse to give the evidence contained in Article 11.

Article 22

The fact that an attempt to take evidence under the procedure laid down in this Chapter has failed, owing to the refusal of a person to give evidence, shall not prevent an application being subsequently made to take the evidence in accordance with Chapter I.

CHAPTER III—GENERAL CLAUSES

Article 23

A Contracting State may at the time of signature, ratification or accession, declare that it will not execute Letters of Request issued for the purpose of obtaining pre-trial discovery of documents as known in Common Law countries.

Article 24

A Contracting State may designate other authorities in addition to the Central Authority and shall determine

the extent of their competence. However, Letters of Request may in all cases be sent to the Central Authority.

Federal States shall be free to designate more than one Central Authority.

Article 25

A Contracting State which has more than one legal system may designate the authorities of one of such systems, which shall have exclusive competence to execute Letters of Request pursuant to this Convention.

Article 26

A Contracting State, if required to do so because of constitutional limitations, may request the reimbursement by the State of origin of fees and costs, in connection with the execution of Letters of Request, for the service of process necessary to compel the appearance of a person to give evidence, the costs of attendance of such persons, and the cost of any transcript of the evidence.

Where a State has made a request pursuant to the above paragraph, any other Contracting State may request from that State the reimbursement of similar fees and costs.

Article 27

The provisions of the present Convention shall not prevent a Contracting State from—

(a) declaring that Letters of Request may be transmitted to its judicial authorities through channels other than those provided for in Article 2;

(b) permitting by internal law or practice, any act provided for in this Convention to be performed upon less restrictive conditions;

(c) permitting, by internal law or practice, methods of taking evidence other than those provided for in this Convention.

Article 28

The present Convention shall not prevent an agreement between any two or more Contracting States to derogate from—

(a) the provisions of Article 2 with respect to methods of transmitting Letters of Request;

(b) the provisions of Article 4 with respect to the languages which may be used;

(c) the provisions of Article 8 with respect to the presence of judicial personnel at the execution of Letters;

(d) the provisions of Article 11 with respect to the privileges and duties of witnesses to refuse to give evidence;

(e) the provisions of Article 13 with respect to the methods of returning executed Letters to the requesting authority;

(f) the provisions of Article 14 with respect to fees and costs;

(g) the provisions of Chapter II.

Article 29

Between Parties to the present Convention who are also Parties to one or both of the Conventions on Civil Pro-

cedure signed at the Hague on the 17th of July 1905[1] and the 1st of March 1954,[2] this Convention shall replace Articles 8-16 of the earlier Conventions.

Article 30

The present Convention shall not affect the application of Article 23 of the Convention of 1905, or of Article 24 of the Convention of 1954.

Article 31

Supplementary Agreements between Parties to the Conventions of 1905 and 1954 shall be considered as equally applicable to the present Convention unless the Parties have otherwise agreed

Article 32

Without prejudice to the provisions of Articles 29 and 31, the present Convention shall not derogate from conventions containing provisions on the matters covered by this Convention to which the Contracting States are, or shall become Parties.

Article 33

A State may, at the time of signature, ratification or accession exclude, in whole or in part, the application of the provisions of paragraph 2 of Article 4 and of Chapter II. No other reservation shall be permitted.

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[1] 99 *British Foreign and State Papers* 990.

[2] 286 UNTS 265.

Each Contracting State may at any time withdraw a reservation it has made; the reservation shall cease to have effect on the sixtieth day after notification of the withdrawal.

When a State has made a reservation, any other State affected thereby may apply the same rule against the reserving State.

Article 34

A State may at any time withdraw or modify a declaration.

Article 35

A Contracting State shall, at the time of the deposit of its instrument of ratification or accession, or at a later date, inform the Ministry of Foreign Affairs of the Netherlands of the designation of authorities, pursuant to Articles 2, 8, 24 and 25.

A Contracting State shall likewise inform the Ministry, where appropriate, of the following—

(a) the designation of the authorities to whom notice must be given, whose permission may be required, and whose assistance may be invoked in the taking of evidence by diplomatic officers and consular agents, pursuant to Articles 15, 16 and 18 respectively;

(b) the designation of the authorities whose permission may be required in the taking of evidence by commissioners pursuant to Article 17 and of those who may grant the assistance provided for in Article 18;

(c) declarations pursuant to Articles 4, 8, 11, 15, 16, 17, 18, 23 and 27;

(d) any withdrawal or modification of the above designations and declarations;

(e) the withdrawal of any reservation.

Article 36

Any difficulties which may arise between Contracting States in connection with the operation of this Convention shall be settled through diplomatic channels.

Article 37

The present Convention shall be open for signature by the States represented at the Eleventh Session of the Hague Conference on Private International Law.

It shall be ratified, and the instruments of ratification shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

The present Convention shall enter into force on the sixtieth day after the deposit of the third instrument of ratification referred to in the second paragraph of Article 37.

The Convention shall enter into force for each signatory State which ratifies subsequently on the sixtieth day after the deposit of its instrument of ratification.

Article 39

Any State not represented at the Eleventh Session of the Hague Conference on Private International Law which is a Member of this Conference or of the United Nations

or of a specialized agency of the Organization, or a Party to the Statute of the International Court of Justice[1] may acceed to the present Convention after it has entered into force in accordance with the first paragraph of Article 38.

The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

The Convention shall enter into force for a State acceding to it on the sixtieth day after the deposit of its instrument of accession.

The accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the accession. Such declaration shall be deposited at the Ministry of Foreign Affairs of the Netherlands; this Ministry shall forward, through diplomatic channels, a certified copy to each of the Contracting States.

The Convention will enter into force as between the acceding State and the State that has declared its acceptance of the accession on the sixtieth day after the deposit of the declaration of acceptance.

Article 40

Any State may, at the time of signature, raitfication or accession, declare that the present Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect on the date of entry into force of the Convention for the State concerned.

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[1]TS 993; 59 Stat. 1055.

At any time thereafter, such extensions shall be notified to the Ministry of Foreign Affairs of the Netherlands.[1]

The Convention shall enter into force for the territories mentioned in such an extension on the sixtieth day after the notification indicated in the preceding paragraph.

Article 41

The present Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 38, even for States which have ratified it or acceded to it subsequently.

If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Netherlands at least six months before the end of the five year period.

It may be limited to certain of the territories to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

Article 42

The Ministry of Foreign Affairs of the Netherlands shall give notice to the States referred to in Article 37, and to the States which have acceded in accordance with Article 39, of the following—

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[1]Extended to Guam, Puerto Rico, and the Virgin Islands pursuant to notification sent by the American Embassy at The Hague on Feb. 6, 1913.

(a) the signatures and ratifications referred to in Article 37;

(b) the date on which the present Convention enters into force in accordance with the first paragraph of Article 38;

(c) the accessions referred to in Article 40 and the dates on which they take effect;

(d) the extensions referred to in Article 40 and the dates on which they take effect;

(e) the designations, reservations and declarations referred to in Articles 33 and 35;

(f) the denunciations referred to in the third paragraph of Article 41.

In Witness Whereof the undersigned, being duly authorised thereto, have signed the present Convention.

Done at The Hague, on the 18th day of March 1970, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Netherlands, and of which a certified copy shall be sent, through the diplomatic channels, to each of the States represented at the Eleventh Session of the Hague Conference on Private International Law.

APPENDIX D

FEDERAL RULES OF CIVIL PROCEDURE

Rule 33. Interrogatories to Parties

(a) Availability; Procedures for Use. Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories, except that a defendant may serve answers and objections within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory.

(b) Scope; Use at Trial. Interrogatories may relate to any matters which can be inquired into under Rule 26(b),

and the answers may be used to the extent permitted by the rules of evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time.

(c) Option to Produce Business Records. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, including a compilation, abstract or summary thereof and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Mar. 30, 1970, eff. July 1, 1970; Apr. 29, 1980, eff. Aug. 1, 1980.)

RULE 34. Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes

(a) Scope. Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on his behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b).

(b) Procedure. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within 30 days after the service of the request, except that a defendant may serve a response within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

(c) Persons Not Parties. This rule does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Mar. 30, 1970, eff. July 1, 1970; Apr. 29, 1980, eff. Aug. 1, 1980.)

RULE 36. Requests for Admission

(1) Requests for Admission. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available

for inspection and copying. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon him. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject

to the provisions of Rule 37(c), deny the matter or set forth reasons why he cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pre-trial conference or at a designated time prior to trial. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(b) Effect of Admission. Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 governing amendment of a pre-trial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Mar. 30, 1970, eff. July 1, 1970.)

APPENDIX E

Translated from the French

July 17, 1980 OFFICIAL JOURNAL OF THE FRENCH REPUBLIC 1979

LAWS

ACT 80-538 of July 16, 1980 relative to disclosure of economic, commercial or technical documents and data to natural persons or legal entities.

The National Assembly and the Senate have adopted,

The President of the Republic promulgates the following Act:

Art. 1. The title of Act 68-678 of July 26, 1968 relative to disclosure of documents and information to foreign authorities in the field of maritime commerce is amended to read:

"Act relative to disclosure of economic, commercial, industrial, financial or technical documents and data to natural persons or legal entitles".

Art. 2. I—Article 1 of Act 68-678 of July 26, 1968 aforesaid is worded as follows:

"Art. 1. Subject to treaties or international agreements, it is prohibited for any natural person of French nationality or habitually residing in French territory and for any executive, representative, employee or agent of a legal entity having its registered office or an establishment therein to disclose in writing, orally or otherwise, in any place, to foreign public authorities, economic, commercial, industrial, financial or technical documents or

data disclosure of which is liable to infringe the sovereignty, security, essential economic interests of France or public policy, specified by the administrative authorities if need be".

II—Article 1A reading as follows is inserted after article 1 of Act 68-678 of July 26, 1968 aforesaid:

"Art. 1A. Subject to treaties or international agreements and applicable laws and regulations, it is prohibited for any party to request, seek or disclose, in writing, orally or otherwise, economic, commercial, industrial, financial or technical documents or information leading to the constitution of evidence with a view to foreign judicial or administrative proceedings or in connection therewith".

Art. 3. Article 2 of Act 68-678 of July 26, 1968 aforesaid is amended to read:

"Art. 2. The parties mentioned in articles 1 and 1A shall forthwith inform the competent minister if they receive any request concerning such disclosures".

Art. 4. Article 3 of Act 68-678 of July 26, 1968 aforesaid is amended to read:

"Art. 3. Without prejudice to heavier penalties prescribed by law, any breach of articles 1 and 1A of this Act shall be punished by imprisonment for two to six months and a fine of 10,000 to 120,000 F or either".

This Act shall be executed as a State law.

Paris, July 26, 1980.

Signed by Valery Giscard D'Estaing, President of the Republic, Raymond Barre, Prime Minister, Alain Peyrefitte, Minister of Justice, Jean Francois Poncet, Foreign Min-

ister, Rene Monory, Minister of the Economy, Andre Giraud, Minister of Industry, Joel Le Theule, Minister of Transportation, Jean-Francois Deniau, Minister of Foreign Trade and Maurice Charretier, Minister of Commerce and Crafts.

[Seal]